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6 Attorneys for Plaintiffs
7 EQUALIA, LLC and HOVERBOARD
TECHNOLOGIES CORPORATION

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 EQUALIA, LLC, a California limited
liability company, and HOVERBOARD
12 TECHNOLOGIES CORPORATION, a
California corporation,

13 Plaintiffs,
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15 v.
16
17 PATMONT REVOCABLE TRUST, a
California trust, and PATMONT MOTOR
WERKS, INC., a California corporation,
doing business as GO-PED,

18 Defendants.
19
20

CASE NO.

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT
OF TRADEMARK AND INVALIDITY OF
TRADEMARK;**

DEMAND FOR JURY TRIAL

21 Plaintiffs Equalia, LLC, a California limited liability company, and Hoverboard
22 Technologies Corporation, a California corporation, as and for their complaint against Defendants
23 Patmont Revocable Trust and Patmont Motor Werks, Inc., allege as follows:

24
I.
INTRODUCTION

25 1. This is an action seeking a declaratory judgment under 28 U.S.C. §§ 2201 and
26 2202 with respect to Equalia, LLC and Hoverboard Technologies Corporation's use of the generic
27 term "hoverboard" and the Patmont Revocable Trust's assertions to the contrary and request for
28 forfeiture of the www.hoverboard.com domain in its cease and desist letter dated September 25,

2015, attached hereto as Exhibit A.

II. PARTIES

2. Equalia, LLC is a California limited liability company in the automaton, electric vehicle, and control system consumer marketplace. Equalia, LLC's principal place of business is located at 380 Logue Avenue, Mountain View, California 94943.

3. Hoverboard Technologies Corporation is a California corporation in the business of developing, marketing, and selling personal transportation vehicles. Hoverboard Technologies Company's principal place of business is located at 11230 Bubb Road, Cupertino, CA 95014.

4. Hereinafter, Equalia, LLC and Hoverboard Technologies Corporation shall be referred to collectively as "Equalia" and all such references shall include Equalia, LLC and Hoverboard Technologies Corporation.

5. Upon information and belief, the Patmont Revocable Trust is a trust legally organized under the laws of California and having an address at 8711 Paradise Valley Boulevard, Lucerne, California 95458.

6. Upon information and belief, the Patmont Revocable Trust is the owner of the United States trademark for "Hoverboard" bearing the serial number 77683653, registered in the Principal Register under International Class 012, and described as an "[e]lectrically powered two wheeled scooter for terrestrial human transportation."

7. Upon information and belief, the Patmont Revocable Trust conducts business under the name Patmont Revocable Trust, Patmont Family Trust 2000, and the Patmont Family Trust.

8. Upon information and belief, Patmont Motor Werks, Inc. is a California corporation doing business in California as Go-Ped and having an address at P.O. Box 97, Pleasanton, California 94550.

9. The nature of the relationship between Patmont and Patmont Motor Werks, Inc. is unknown. Hereinafter, the Patmont Revocable Trust and Patmont Motor Werks, Inc. shall be referred to collectively as "Patmont" and all such references shall include the Patmont Revocable

1 Trust, the Patmont Family Trust, the Patmont Family Trust 2000, Patmont Motor Werks, Inc., and
2 Go-Ped.

6 11. Upon information and belief, consumers do not associate the term "hoverboard"
7 with products coming from Patmont.

III. JURISDICTION AND VENUE

0 12. This Court has jurisdiction over this matter as it arises under Federal law
1 concerning violations of the Lanham Act, 15 U.S.C. §§ 1125, *et al.*, and as a declaratory
1 judgment action under 28 U.S.C. §§ 2201 and 2202.

3 13. This Court has personal jurisdiction over Patmont because, upon information and
4 belief, Patmont sells products to customers located in California in this District, and through its
counsel sent the cease and desist letter to Equalia, which is located in this District.

14. Venue is proper in this District under 28 U.S.C. § 1391.

15. This action for declaratory judgment is timely and proper.

IV. FACTUAL BACKGROUND

24 17. A generic term is a word, often found in the dictionary, which identifies products
25 and/or services that are not specific to any particular source. *See* Trademark Manual of
26 Examining Procedure 1209.01. A mark that is generic for goods or services is not registerable on
27 either the Principal or the Supplemental Register under any circumstances. *Ibid.*

28 18. The term "hoverboard" is generic and descriptive, as it identifies a general class of

1 goods. The term "hoverboard" has general acceptance as indicating a powered one-wheeled, two-
2 wheeled, or wheel-less single-rider transportation device.

3 19. The first mainstream use of the term "hoverboard" is believed to be the 1989
4 movie *Back to the Future II*, in which protagonist Marty McFly rides a wheel-less hovering board
5 to escape gang members in the future year 2015. Mr. McFly commandeers the board from a
6 young girl, stating: "Hey, kid, I need your... hoverboard?" and he uses it to evade capture by the
7 movie's antagonists. As he goes by on the board, the character Whitey yells: "He's got a
8 hoverboard!" An image taken from the film depicts Mr. McFly riding the hoverboard over water:



17 20. In September of 2015, the Oxford English Dictionary added the word
18 "hoverboard" to its official lexicon with the description: "A board, resembling a skateboard
19 without wheels, which hovers above the ground and may be ridden like a skateboard." It lists the
20 1988 *Back to the Future II* script, authored by B. Gale, as the first use of the term. It also lists
21 subsequent uses, including a November 1, 1993 use from the *St. Louis Post-Dispatch*: "In the
22 school gym, each space traveler got to scoot around on a hoverboard made by students at
23 Southern Illinois University at Edwardsville to ride on a cushion of air." Attached hereto as
24 Exhibit B is a true and correct copy of the Oxford English Dictionary entry available online for
25 the word "hoverboard" as visited on October 6, 2015.

26 21. The crowdsourced encyclopedia Wikipedia includes an article entitled
27 "Hoverboard" which discusses origins of the term "hoverboard" as well as numerous references to
28 "hoverboards" in popular culture, television, and the media. Attached hereto as Exhibit C is a true

1 and correct copy of the Wikipedia article as retrieved on September 30, 2015.

2 22. News organizations commonly refer to "hoverboards" in describing two-, one-, or
3 wheel-less single-rider transportation device. For example, an August 27, 2015, BuzzFeed News
4 article dated August 27, 2015 is entitled, "Everything You Need To Know About The Hoverboard
5 Craze" and refers generally to these types of vehicles. A true and correct copy of the article
6 retrieved on October 1, 2015 is attached hereto as Exhibit D.

7 23. Companies also commonly refer to their products generically as "hoverboards."
8 Attached hereto as Exhibit E is a true and correct copy of an article from Wired News dated
9 August 4, 2015 and retrieved on September 30, 2015, entitled, "Here's That Lexus Hoverboard
10 Finally In Action." Exhibit F is a true and correct copy of an article from GlobalNews/The
11 Canadian Press dated September 29, 2015 and retrieved on October 1, 2015, entitled "Unboard
12 hoverboard market engulfed in patent war".

13 24. Patmont applied for the mark "Hoverboard" on March 9, 2009. The application
14 was filed under a 1(a) basis with use of the mark "at least as early as 05/10/1999." The mark
15 "Hoverboard" was to be used in connection with a two-wheeled scooter product, the "Go-Ped
16 ESR 750-H Hoverboard".

17 25. The Go-Ped ESR 750-H Hoverboard has two wheels and a handlebar, and is
18 depicted below as taken from <http://goped.com/esr750-hoverboard/> on October 6, 2015:



1 26. No Office Action was issued on the "Hoverboard" trademark application and the
2 trademark issued in the Principal Register on September 22, 2009.

3 27. The Go-Ped ESR-H Hoverboard is available online from GoPed.com for
4 \$1,529.99.

5 28. Equalia is in the process of launching a hoverboard product which consists of a
6 board with one centered electrically-powered wheel for locomotion for a single rider. This
7 hoverboard is available through the crowdfunding site Kickstarter for approximately one month,
8 lasting from September 17, 2015 to October 21, 2015. The Kickstarter page is located at
9 <https://www.kickstarter.com/projects/552747221/hoverboard-the-next-evolution-in-personal-electric/>.

10 29. The entry-level pricing of this hoverboard is between \$3,775 and \$3,995,
11 depending on how early the purchaser funded, and is anticipated to retail for \$4,375 when made
12 publically available for sale in 2017.

13 30. The hoverboard Equalia has offered for sale is depicted below, as taken from
14 <https://www.kickstarter.com/projects/552747221/hoverboard-the-next-evolution-in-personal-electric/> on October 6, 2015:



15 31. Equalia purchased the www.hoverboard.com domain name on or around February
16 19, 2014, at which time it began developing the website for use with its upcoming hoverboard
17 product and in interstate commerce. The www.hoverboard.com domain is currently a launch page
18 introducing Equalia's hoverboard product and linking to the Kickstarter crowdfunding site.

19 32. In addition to its generic and descriptive nature, the term "hoverboard" is not
20 associated with Patmont. This is evidenced by searches performed online, which do not yield
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1 results for Patmont's product, but do provide pages of products described generally as
2 "hoverboards." See attached Exhibit G, which provides a true and correct copy of the first five
3 pages of a Google search for the term "hoverboard" and does not yield any links or reference to
4 the Patmont product performed on October 1, 2015.

5 33. On December 12, 2012, Patmont Motor Werks, Inc. filed for Chapter 11
6 bankruptcy in the Nevada Bankruptcy Court, Case No. 12-52799.

7 34. On August 26, 2015, an assignment was filed transferring ownership of the
8 "Hoverboard" mark from Patmont Motor Werks, Inc. to the Patmont Revocable Trust.

9 35. On September 10, 2015, Patmont Motor Werks, Inc. filed a Combined Declaration
10 of Use and Incontestability under Sections 8 and 15 with the United States Patent and Trademark
11 Office in connection with the "Hoverboard" mark. While Patmont Motor Werks, Inc. was listed
12 as the owner, the Patmont Revocable Trust was listed as the proposed owner of the trademark.

13 36. On September 25, 2015, Patmont, through its counsel, forwarded to Equalia a
14 written notice of infringement which asserted that Equalia's use of the name "hoverboard" was a
15 violation of Patmont's "Hoverboard" mark. It demanded Equalia cease and desist use of the name
16 and surrender of the www.hoverboard.com domain by October 9, 2015 at 5:00 p.m.

17 37. Equalia's use of the term "hoverboard" to describe its product does not violate the
18 Lanham Act with respect to Patmont's trademark as the term is generally descriptive of a class of
19 goods generically described as "hoverboards."

20 38. Equalia's use of the term "hoverboard" to describe its product constitutes fair use
21 of a generic and descriptive term.

22 **V.**
23 **TRADEMARK INFRINGEMENT**

24 39. Plaintiffs incorporate by reference all allegations contained in the preceding
25 paragraphs.

26 40. Defendants have asserted, and Plaintiffs denied, that Plaintiffs' use of the generic
27 name "hoverboard" for its product violates the Lanham Act with respect to Defendants or any of
28 Defendants' trademarks and/or products.

1 41. Defendants' assertions create a reasonable apprehension by Plaintiffs that
2 Defendants will file a lawsuit against Plaintiffs asserting claims for trademark infringement under
3 15 U.S.C. §§ 1114 and/or 1125.

4 42. The cease and desist letter prepared by or on behalf of Defendants and forwarded
5 to Plaintiffs create an actual controversy regarding the right of Plaintiffs to use the generic name
6 "hoverboard" in connection with its single-wheeled electric transportation product.

7 43. Defendants' assertion of trademark infringement adversely affects Plaintiffs and
8 will continue to do so until this Court makes a determination of Plaintiffs' absolute right to
9 continue to use the generic term "hoverboard" in connection with its product.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement)

12 44. Plaintiffs incorporate by reference all allegations contained in the preceding
13 paragraphs.

14 45. This is a declaratory judgment action under the Trademark Laws of the United
15 States, 15 USC § 1051 et seq. (the "Trademark Act"), and 28 USC §§ 2201 and 2202 (the
16 "Declaratory Judgment Act"). As an actual justiciable controversy exists by way of the credible
17 threat of immediate litigation and demand to cease and desist use of the mark in the sales and
18 marketing Plaintiffs' product, as well as the use of the mark on Plaintiffs' product, Plaintiffs seek
19 relief from this Court.

20 46. Plaintiffs request declaratory judgment against Defendants that Plaintiffs' past use
21 and continued use of the term "hoverboard" is not intended or likely to cause confusion, mistake,
22 or deception as between the source, association, or affiliation of the parties' respective products,
23 services, and/or businesses under the Trademark Act.

24 47. Plaintiffs further seek declaratory judgment that its past use and continued use of
25 the term "hoverboard" does not jeopardize the goodwill, if any, symbolized by Defendants'
26 registered trademark, or cause any other injury to Defendants under the Trademark Act.

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Second CLAIM FOR RELIEF**(Invalidity and Unenforceability of Trademark)**

48. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.

49. This is a declaratory judgment action under the Trademark Act and the Declaratory Relief Act. As an actual justiciable controversy exists by way of the credible threat of immediate litigation and demand to cease and desist use of the mark in the sales and marketing Plaintiffs' product, as well as the use of the mark on Plaintiffs' product, Plaintiffs seek relief from this Court.

50. Plaintiffs request an order declaring that the alleged trademark asserted by Defendants for the mark "hoverboard" are invalid and unenforceable for, *inter alia*, the following not all-inclusive reasons:

- 13 (a) an absence of sufficient creativity and originality to be entitled to
14 trademark registration or protection;
- 15 (b) failure to distinguish goods and/or services from those manufactured or
16 sold by others; and
- 17 (c) failure to indicate the source of goods sought to be identified.

THIRD CLAIM FOR RELIEF**(Unfair Competition)**

51. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.

52. This is a declaratory judgment action under the Trademark Act and the Declaratory Relief Act. As an actual justiciable controversy exists by way of the credible threat of immediate litigation and demand to cease and desist use of the mark in the sales and marketing Plaintiffs' product, as well as the use of the mark on Plaintiffs' product, Plaintiffs seek relief from this Court.

53. Plaintiffs seek an order that Defendants' use of the generic term "hoverboard" creates a false or misleading representation of fact in commerce as to the broad categories of

1 goods which are sold, marketed, or generally referred to under the generic term "hoverboard",
2 which is likely to cause confusion or mistake, or to deceive others as to the affiliation, connection,
3 or association as to the goods, services which use the term "hoverboard," to which Defendants
4 have improperly sought trademark protection.

5 **REQUEST FOR RELIEF**

6 Wherefore, Plaintiffs Equalia, LLC and Hoverboard Technologies Corporation request
7 that this Court enter a declaratory judgment against Defendants Patmont Revocable Trust and
8 Patmont Motor Werks, Inc. as follows:

9 1. That the Court enter an order declaring Defendants Patmont Revocable Trust and
10 Patmont Motor Werks, Inc. alleged trademark lacks the requisite legal requirements to be
11 protectable on the Principal Register and to be enforceable;

12 2. That the Court enter an order declaring that Plaintiffs Equalia, LLC and
13 Hoverboard Technologies Corporation have not infringed any valid, distinctive, and enforceable
14 trademark rights owned by Defendants Patmont Revocable Trust and Patmont Motor Werks, Inc.
15 relating to the use or sale of the generic term "hoverboard";

16 3. That the Court enter judgment declaring that Plaintiffs Equalia, LLC and
17 Hoverboard Technologies Corporation's use of the generic term "hoverboard" constitutes fair use
18 of a generic term;

19 4. That Defendants Patmont Revocable Trust and Patmont Motor Werks, Inc. be
20 ordered to pay Plaintiffs Equalia, LLC and Hoverboard Technologies Corporation's attorneys'
21 fees, costs, and other expenses incurred as a result of this controversy created by the cease and
22 desist letter; and

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1 5. That this Court grant such further and other relief as the Court deems just and
2 proper.
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Dated: October 7, 2015

ROPERS, MAJESKI, KOHN & BENTLEY

5 By: /s/ Lael D. Andara
6 LAEL D. ANDARA
7 MARIE E. SOBIESKI
8 Attorneys for Plaintiffs
9 EQUALIA, LLC and HOVERBOARD
10 TECHNOLOGIES CORPORATION
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Ropers Majeski Kohn & Bentley
A Professional Corporation
Redwood City

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

Dated: October 7, 2015

ROPER, MAJESKI, KOHN & BENTLEY

By: /s/ Lael D. Andara
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MARIE E. SOBIESKI
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